

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PRESTON BLANTON, #42100-177,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 3:12-CV-5077-L-BH
	§	
UNITED STATES OF AMERICA,	§	
	§	
Respondent.	§	

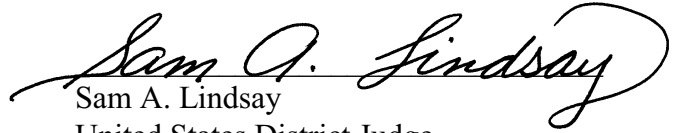
ORDER

Preston Blanton (“Blanton” or “Petitioner”) brought this habeas action on December 11, 2012, by filing a Petition Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. On January 29, 2013, Blanton filed a Motion for Return of Property (Doc. 8). This case was referred to Magistrate Judge Irma Carrillo Ramirez, who entered Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) on January 30, 2013, recommending that the Motion for Return of Property be construed as a new civil action under 28 U.S.C. § 1331. No objections to the Report were filed.

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions of the magistrate judge are **correct**, and **accepts** them as those of the court. As noted by the magistrate judge, Blanton’s Motion for Return of Property should have been brought as a separate civil action under 28 U.S.C. § 1331 because such a request is inappropriate for inclusion in a federal habeas proceeding when the underlying criminal action has already concluded. Accordingly, the clerk of the court is **directed** to open a new civil action for Blanton’s Motion for Return of Property and term the motion

(Doc. 8) that was docketed in this habeas case. The court's determination in this regard does not affect Blanton's habeas petition, which remains pending.

It is so ordered this 15th day of February, 2013.


Sam A. Lindsay
United States District Judge